

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE BAILEY III,

Plaintiff,

No. CIV S-04-2067 GEB EFB P

vs.

J. WEDELL, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 12, 2007, the United States Marshal returned service unexecuted on defendant Latteri because said individual is deceased. On October 2, 2007, the court ordered the Clerk to serve a copy of the USM-285 form for deceased defendant Latteri on plaintiff, thereby invoking the 90-day limit for filing a motion for substitution pursuant to Federal Rule of Civil Procedure 25(a)(1). Dismissal is mandatory if no such motion is filed within the 90-day period. Fed. R. Civ. P. 25(a)(1). The court finds that the 90 days have passed, and no motion for substitution has been filed.

Accordingly, it hereby is RECOMMENDED that defendant Latteri be dismissed from this action.

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These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: February 24, 2009.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE